D.B.CIVIL SPECIAL APPEAL NO.81/2002
Union of India & Ors. Vs. S.G.Kale

DATE OF ORDER:22.05.2006

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.Sangeet Lodha for the appellants

BY THE COURT(PER HON'BLE MR.MATHUR J.)

We have heard the learned counsel for the appellants and perused the impugned order of the learned Single Judge dated 19th March, 2001.

The respondent S.G.Kale was Accountant in a private firm namely M/s Jodhpur Woolen Mills Ltd. It appears that on going to the details available on record, it was noticed that the assessee namely M/s Jodhpur Woolen Mills Ltd. had deducted at source TDS of Rs.1,38,197/- for the Assessment Year 1982-83 from the payment of interest to various parties, but failed to deposit the amount of tax so deducted to the credit of Central Government within the prescribed time limit under Section 1980 of the Income Tax Act, 1961 read with Rule 30 of the Income Tax Rules, 1962. Thus, a decision was taken to launch a prosecution under Section 276-B read with Section 278-B(1) of the Income Tax Act against the Directors of the Company. The

Department filed a complaint against the Company, two of its Joint Managing Directors and two Directors and the respondent who was Accounts Officer before the Special Court for Economic Offences, Jaipur. Later on the case was transferred to the Special Court for Economic Offences at Jodhpur. The respondent challenged the prosecution on number of counts. It was admitted by the Department before the learned Single Judge that the Assessing Authority under Section 201 absolved the Company and its officers from the imposition of penalty on being satisfied that the breach was not deliberate. In view of the aforesaid fact the learned Single Judge found that if the Department was of the view that it was a technical breach, it was not a fit case for launching the prosecution. The learned Single Judge also observed that absence of reasonable and sufficient cause for failure is an essential ingredient of the default under Section 200 either for levy of penalty under Section 201 or for making out a case for punishment under Section 276-B read with Section 278-AA. There can be no chance for ultimate conviction for the said offences.

Having considered the entire matter, we are of the view that the sanctioning authority had not applied its mind as to whether all the essential ingredients of the offence under Section 276-B. Even otherwise it is a stale matter of Assessment Year

1982-83 i.e. about 24 years back. No interference is warranted with the judgment of the learned Single Judge. The special appeal stands dismissed.

(MANAK MOHTA) J. **(N.N.MATHUR) J.**

BKS/-